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This issue contains:

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

19 CFR Parts 115 and 178

(T.D. 86-92)

Certification of Cargo Containers and Road Vehicles Pursuant to International Conventions

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to reflect the transfer of functions concerning certification of containers and road vehicles for transportation under Customs seal, pursuant to international Customs conventions, from the Secretary of Transportation (acting through the Coast Guard) to the Secretary of the Treasury (acting through the Customs Service). This transfer is mandated by E.O. 12445 of October 17, 1983.

EFFECTIVE DATE: June 2, 1986.

FOR FURTHER INFORMATION CONTACT: Donald Reusch, Office of Regulations and Rulings (202-566-5706) or Arnold L. Sarasky, Office of Inspection and Control, (202-566-8648), U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION

Background

By Executive Order 11459, published in the Federal Register (34 FR 5057), March 11, 1969, the President designated the Secretary of Transportation to take all necessary actions to administer the approval and certification of containers and vehicles for International Transport of Goods Under Cover of TIR Carnets (TIR Convention), done at Geneva on January 15, 1959 (TIAS 6633), and the Customs Convention on Containers, done at Geneva on May 18, 1956 (TIAS 6634). Actual administration was undertaken by the Commandant of the U.S. Coast Guard and regulations setting forth the specific

requirements are contained in title 49, Code of Federal Regulations, Parts 420 through 424 (49 CFR Parts 420 through 424).

On October 17, 1983, the President signed E.O. 12445, transferring the administration of approval and certification of containers and road vehicles to the Secretary of the Treasury. In addition to the two Conventions previously mentioned, the E.O. mandates the administration of a third, the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (TIR Convention), done at Geneva on November 14, 1975 (TIAS), which replaces the 1959 convention as to signatories to both conventions and to those conventions as modified, amended, or otherwise supplemented from time to time. Since the U.S. has recently acceded to the Customs Convention on Containers, 1972, provisions which supplement the 1956 convention are included in this document.

Under the certification program, containers (under the terms of the container convention), and containers and road vehicles (under the terms of the TIR convention), or proposed designs for such conveyances, may be submitted to various certifying authorities worldwide for approval. Three such certifying authorities, all named in the regulations, are designated by the Commissioner of Customs to perform the examination and certification functions for the U.S. The regulations set forth the specifics of the certification program, and the approval of a conveyance would merely expedite its movement along with its merchandise.

The regulations by which the Coast Guard administered this area did not reflect the provisions of the TIR Convention, 1975, or the Customs Convention on Containers, 1972, and did not distinguish between Convention provisions applicable to road vehicles and those applicable to containers. The five parts previously codified in the Coast Guard Regulations (49 CFR Parts 420–424), are redesignated as Subparts A through F of new Part 115, Customs Regulations (19 CFR Part 115). References to Commandant of the Coast Guard are changed to Commissioner of Customs, and section references within the regulations are changed to reflect the recodification.

The regulations do not include the Oceanographic Society, Inc., which was listed in § 421.1, Coast Guard Regulations (49 CFR 421.1), as a designated Certifying Authority. They cannot be located and are therefore presumed to no longer exist.

On May 15, 1985, Customs published a notice in the Federal Register (50 FR 20227), proposing to add the new Part 115 to the regulations and inviting the public to submit comments on the proposal by July 15, 1985.

After analysis of the comments received and further consideration of the matter, the proposal is being adopted with certain changes which have been prompted by suggestions submitted by the commenters. These changes will be discussed in the analysis of the comments received which follows.

ANALYSIS OF COMMENTS

Three comments were received in response to the May 15, 1985, Federal Register notice. The comments were made in regard to specific sections of the proposed regulations, rather than in general terms.

Two commenters expressed concern over the wording of § 115.2(b) as concerns the physical location of certifying authorities. The proposal provided that a conveyance be presented for approval in a country where the owner is a resident or is established. This was said to be too restrictive, considering existing convention language.

We agree. Accordingly, the language of § 115.2(b) has been changed to permit presentation for approval to any certifying authority to whom an owner or operator is able to present a conveyance.

Two commenters discussed problems with § 115.3(a), which defines "certifying authority" for the purposes of Part 115. It is stated that the section should make it clear that such an "authority" be incorporated or established in the U.S., and be "qualified" to perform the tasks required. In line with these points, we have changed § 115.3(a) to reflect that a certifying authority must be a U.S. company which is competent to carry out all necessary responsibilities.

One commenter objects to the definition of a container as being fully or partially enclosed. This requirement is, however, a direct quote from Chapter I, Article 1(e)(i) of the TIR Convention.

One commenter inquired about the meaning of the phrase "an extended production run" in § 115.8(d), the section dealing with supplementary examinations of road vehicles approved by design type. We consider the phrase to mean a continuous production run of many units over a long period of time, as well as a new production run following the conclusion of a previous run.

Two commenters found a portion of § 115.9 to be cumbersome. The section provides for approval of containers under either of two international container conventions. The commenters believe that the potential need for separate certificates for each container certified could be burdensome and suggest that the possibility of a consolidated form by explored.

We do not believe that the adherence to both conventions will cause a problem. The requirements of both the 1975 TIR and the 1972 Container Conventions are virtually the same. Although there might have been some problem without the inclusion in the regulations of the 1972 Convention because the older convention did not provide for design type approval and reference to it was for information purposes, that problem will no longer exist with inclusion of the 1972 convention. Since the U.S. is a contracting party to both conventions, we believe that we must provide for possible utilization of either or both. In this regard, it is noted that the certificate of approval of both conventions is the same and that check

boxes on the certificate and forms utilized by the certifying authority are all that is needed to avoid any possible problem. Insofar as there might be some small difference between the technical requirements of each convention, the certifying authority will normally be able to discharge its functions by complying with the requirements of either convention. We believe that we have made sufficient changes in the language of § 115.9 to eliminate any of the problem areas perceived by the commenters.

One commenter pointed out that § 115.10, relating to approval of containers, contains erroneous cross-references to sections of Part 115 dealing with road vehicles. These incorrect references have been deleted.

One party considers the § 115.11(a) grant of authority to the Commissioner to approve fees established by each certifying authority to be unwarranted. This provision is merely carried over from the long-standing regulations by which the Coast Guard administered this program.

The same commenter believes that a maximum limit should be placed on the length of time a certifying authority must maintain approval files. It is our position that the records should be maintained indefinitely since there may be a need to check, for example, a series of defects common to one production run of vehicles or containers.

A commenter points out certain inconsistencies in §§ 115.25, 115.26, and 115.27, in that in two sections "manufacturers" or "owners" may seek approval of containers by design type, where as "owners" are not mentioned in the third section. We have examined these provisions in light of the Container Convention which provides for "manufacturers" only, seeking such approval. Accordingly, we have deleted references to "owners" in those sections.

All of the commenters expressed problems with §§ 115.28(f), and 115.63(e), which contain identical language concerning the application for approval by design type of containers and road vehicles. Both sections would require a statement that the applicant is a resident of, or established in, the U.S.

Under a procedure which was not in existence when the May 15, 1985, notice was published, U.S. certifying authorities will now be authorized to approve containers and road vehicles manufactured in non-contracting countries. Accordingly, the provision to which the commenters took exception is no longer needed and has been deleted from §§ 115.28(f) and 115.63(e).

One commenter states that § 115.32(a) (2), (3), and (4), needs some adjustment. The section contains the information which must be displayed on a container's metal approval plate. It is stated that (a)(2) does not provide for the identity of the certifying authority, and that (a) (3) and (4) overlap each other. As to (a)(2), we agree, and have added language to provide for the inclusion of a two digit identifying code. As to (a)(3) and (a)(4), we disagree. Paragraph

(a)(3) provides for the model or type of container, whereas (a)(4) provides for the manufacturer's serial number. Accordingly, no change has been made to § 115.32(a) (3) and (4).

A commenter notes that § 115.39, as proposed, gives the impression that containers manufactured in non-contracting countries may need to be physically produced in a country other than the place of manufacture in order to be inspected. We agree, and have changed the section to make it clear that a container may be submitted for inspection in the country of manufacture.

It is noted that § 115.40 makes no reference to the 1972 Convention on Containers. This was an oversight and the appropriate reference has been added to the section.

One party suggests that § 115.42 should require a container approval plate to contain a number assigned by the certifying authority if the manufacturer's number is unknown. We wish to point out that the manufacturer's number should always be available, otherwise the acceptability of the approval plate itself would be in doubt.

Finally, a commenter points out our erroneous use of the word "containers" in § 115.66(a)(1). We have made the necessary correction by substituting the word "vehicles".

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in § 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Paperwork Reduction Act

The collection of information requirements in the amendments are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501). Therefore, they have been submitted to and approved by the Office of Management and Budget and assigned control number 1515–0145. Accordingly, Part 178, Customs Regulations (19 CFR Part 178), which lists the information collections contained in the regulations and the control numbers assigned by OMB, is being amended to include this control number.

Regulatory Flexibility Act

Pursuant to § 3 of the Regulatory Flexibility Act (Pub. L. 96–353, 5 U.S.C. 301 *et seq.*), it is hereby certified that the regulations set forth in this document will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

DRAFTING INFORMATION

The principal author of this document was Larry L. Burton, Regulations Control Branch, Office of Regulations and Rulings, Customs Headquarters. However, personnel from other Customs offices participated in its development.

LIST OF SUBJECTS IN 19 CFR PART 115 AND PART 178

PART 115

Cargo vessels, Coastal zone, Freight, Harbors, Maritime carriers, Vessels.

PART 178

Reporting and recordkeeping requirements, Paperwork requirements, Collections of information.

AMENDMENTS TO THE REGULATIONS

Chapter I of title 19, Code of Federal Regulations (19 CFR Chapter I), is amended by adding a new Part 115 as set forth below and amending Part 178, Customs Regulations (19 CFR Part 178), in the following manner:

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 178 continues to read as follows:

AUTHORITY: 5 U.S.C. 301, 19 U.S.C. 1624, 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by inserting the following in the appropriate numerical sequence according to the section number under the columns indicated:

§178.2 Listing of OMB Control Numbers.

19 CFR section	Description	OMB Control No.
Part 115.....	Information to obtain certification that containers/road vehicles meet construction requirements.	1515-0145

Title 19, Code of Federal Regulations, Part 115 (19 CFR 115), reads as follows:

PART 115—CARGO CONTAINER AND ROAD VEHICLE CERTIFICATION PURSUANT TO INTERNATIONAL CUSTOMS CONVENTIONS

SUBPART A—GENERAL

SUBPART B—ADMINISTRATION

SUBPART C—PROCEDURES FOR APPROVAL OF CONTAINERS BY DESIGN TYPE

SUBPART D—PROCEDURES FOR APPROVAL OF CONTAINERS AFTER MANUFACTURE

AUTHORITY: 5 U.S.C. 301, 19 U.S.C. 66, 1624; E.O. 12445 of October 17, 1983.

SUBPART A—GENERAL

§ 115.1 Purpose.

This chapter establishes procedures for certifying containers and road vehicles in conformance with the Customs Convention on Containers (1956) (TIAS 6634), the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (1959) (TIAS 6633), the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets, November 14, 1975 (TIAS), and the Customs Convention on Containers, 1972 (TIAS), by applying the procedures and technical conditions set forth in the annexes to these conventions.

§ 115.2 Application.

(a) Certification of containers and road vehicles for international transport under Customs seal is voluntary. This chapter does not require certification of containers and road vehicles.

(b) The Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (TIR Convention), January 15, 1959 (20 UST 184, TIAS 6633), requires that the approval of road vehicles be made by competent authorities of the country in which the owner or carrier is a resident or is established, and that containers should be either similarly approved, or approved by the competent authority of the country where it is first used for transport under Customs seal. The Customs Convention on Containers, May 18, 1956 (20 UST 301, TIAS 6634), requires that the approval of containers be made by competent authorities of the country in which the owner is a resident or is established or by those of the country where the container is used for the first time for transport under Customs seal. The TIR Convention, 1975, generally provides that a road vehicle, for which approval at a stage after manufacture is desired, shall be approved by the competent authority where the vehicle owner or operator is established or located, or where the vehicle is registered. Such approval under the TIR Convention, 1975, or, for containers, the Customs Convention on Containers, 1972, may be accomplished by the competent authority of the country in which the owner or operator is able to produce the conveyance. The 1975 TIR Convention and the Customs Convention on Containers, 1972, also provide that the Certifying Authority of the country of manufacture, if that country is a contracting party to the Convention, may approve a series of road vehicles or containers presented for design type approval. The procedures for applying for certification are contained in §§ 115.28, 115.38, 115.49, and 115.63 of this part.

§ 115.3 Definitions.

For the purposes of this part:

(a) *Certifying Authority.* "Certifying Authority" means a nonprofit firm or association, incorporated or established in the U.S., which the Commissioner finds competent to carry out the functions of this part and which he designates to certify containers and road vehicles for international transport under Customs seal.

(b) *Commissioner.* "Commissioner" means the Commissioner of Customs.

(c) *Container.* "Container" means an article of transport equipment (lift van, portable tank, or other similar structure).

(1) Fully or partially enclosed to constitute a compartment intended for containing goods;

(2) Of a permanent character and strong enough to be suitable for repeated use;

(3) Specifically designed to facilitate the carriage of goods by one or more modes of transport, without intermediate reloading;

(4) Designed for ready handling, particularly its transfer from one mode of transport to another;

(5) Designed to be easily filled and emptied; and

(6) Having an internal volume of 1 cubic meter (35.3 cubic feet) or more.

(d) *Manufacturer.* "Manufacturer" means an organization or person constructing containers or road vehicles for certification in accordance with this chapter.

(e) *Prototype.* "Prototype" means a sample unit of a series of identical containers or road vehicles all built, so far as practical, under the same conditions.

(f) *Road vehicle.* "Road Vehicle", as defined in Chapter 1, Article 1 of the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (TIR Convention), November 14, 1975 (TIAS), means not only any power-driven road vehicle but also any trailer or semi-trailer designed to be coupled to it.

(g) *Customs and TIR/Container Plan.* "Customs and TIR/Container Plan" means the designer's drawing of a vehicle (for TIR purposes) or container (for TIR and Container Convention purposes) that illustrates each requirement in §§ 115.30, 115.40, 115.51, or 15.65, as appropriate to this part.

(h) The definitions in the subject Conventions shall be considered applicable to terms not specifically defined above.

§ 115.4 Conflicting provisions.

The provisions of the most recent TIR/Container Convention shall apply in the event of conflict between it and an earlier TIR/Container Convention covered by these regulations.

SUBPART B—ADMINISTRATION

§ 115.6 Designated Certifying Authorities.

(a) The American Bureau of Shipping, 45 Eisenhower Dr., Paramus, New Jersey 07652.

(b) International Cargo Gear Bureau, Inc., 17 Battery Place, New York, New York 10004.

(c) The National Cargo Bureau, Inc., One World Trade Center, Suite 2757, New York, New York 10048.

§ 115.7 Designation of additional Certifying Authorities.

(a) The Commissioner may designate as a Certifying Authority any nonprofit firm or association that he finds competent to carry out the functions of §§ 115.8 through 115.14 of this subpart.

(b) Any designation as Certifying Authority may be terminated by the Commissioner.

§ 115.8 Certifying Authorities responsibilities—road vehicles.

(a) *General.* Road vehicles may be approved individually or by design type.

(b) *Individual approval.* The Certifying Authority to whom a road vehicle is submitted for approval shall inspect such road vehicle produced in accordance with the general rules contained in Annex 3 of the TIR Convention, 1975.

(c) *Design type approval.* The Certifying Authority to whom a road vehicle is submitted for design type approval shall examine the drawings and detailed design specifications submitted with the application for approval. The Certifying Authority shall advise the applicant of any changes that must be made to the proposed design type in order that approval may be granted. The Certifying Authority shall examine one or more vehicles to confirm that such vehicles comply with the technical conditions contained in Annex 2 of the TIR Convention, 1975. The Certifying Authority shall notify the applicant of its decision to grant design type approval, and it shall issue an approval certificate complying with Annexes 3 and 4 of the TIR Convention, 1975.

(d) *Supplementary examinations.* If a road vehicle approved by design type is the subject of an extended production run under one certificate of approval, the Certifying Authority shall confirm by examination of one or more road vehicles during the manufacturing process, or by other means, that such vehicles continue to meet the approved drawings and detailed design specifications and the technical requirements of Annex 2 of the TIR Convention, 1975.

For the purposes of this section, an extended production run shall be considered a continuous run of many units over long periods of time, as well as a new run following the completion of a previous run.

§ 115.9 Certifying Authorities responsibilities—containers.

(a) *General.* Containers may be approved for transport under seal by design type at the manufacturing stage or, otherwise, at a stage subsequent to manufacture.

(b) *Design type approval.* The Certifying Authority to whom a container is submitted for design type approval shall examine the drawings and detailed design specifications submitted with the application for approval. The Certifying Authority shall advise the applicant of any changes that must be made to the proposed design type so that approval may be granted. The Certifying Authority shall examine one or more containers to confirm that such containers comply with the technical requirements of Part 1, Annex 7, TIR Convention, 1975, and Annex 4 of the Customs Convention on Containers, 1972. The Certifying Authority shall issue a certificate authorizing the applicant to affix an approval plate, as described in Appendix 1 to Part II, Annex 7 of the TIR Convention, 1975, and Annex 5 of the Customs Convention on Containers, 1972, for all

containers manufactured in conformity with the specifications of the type of container approved. This certificate shall comply with the model certificate in Appendix 2, Part II, Annex 7 of the TIR Convention, 1975, and Appendix 2 of Annex 5 of the Customs Convention on Containers, 1972.

(c) *After manufacture.* The Certifying Authority to whom containers are submitted for approval after manufacture, shall examine as many containers as necessary to ascertain that they comply with the technical conditions prescribed in Part 1, Annex 7, TIR Convention, 1975, and Annex 5 of the Customs Convention on Containers, 1972. The Certifying Authority shall issue a certificate of approval authorizing the applicant to affix an approval plate to the specific number or series of containers being approved. The certificate shall comply with the model certificate of approval in Appendix 3, Part II, Annex 7, TIR Convention, 1975, and Appendix 3, Annex 5, Customs Convention on Containers, 1972.

(d) *Supplementary examinations.* If a container approved by design type is the subject of an extended production run or several production runs under one certificate of approval, the Certifying Authority shall confirm by examination of one or more containers during the manufacturing process, or by other means, that such containers continue to meet the approved drawings and detailed design specifications and the technical requirements of Annex 7 of the TIR Convention, 1975, and Annex 4 of the Customs Convention on Containers, 1972. For the purposes of this section, an extended production run shall be considered as a continuous run of many units over long periods of time, as well as a new run following completion of a previous run.

§ 115.10 Certificate of approval.

A Certifying Authority shall issue a certificate of approval by design type for a specified number or unlimited series of containers that are approved in accordance with the procedures contained in §§ 115.29, 115.31, 115.38, and 115.41, and road vehicles that are approved in accordance with the procedures contained in §§ 115.49, 115.52, 115.63, and 115.66 of this part.

(a) *Road vehicles.* A Certifying Authority shall issue a certificate of approval conforming to the model in Annex 4 of the 1975 TIR Convention for vehicles submitted for individual or design type approval, if satisfied that the vehicles comply with the technical conditions prescribed in Annex 2 of the TIR Convention, 1975.

(b) *Containers.*

(1) Approval after Manufacture.

A Certifying Authority shall issue a certificate of approval conforming to the model in Appendix 3, Part II to Annex 7 of the TIR Convention, 1975, and Appendix 3 to Annex 5 of the Customs Convention on Containers, 1972, for containers approved at a stage after manufacture, when it has been ascertained that the containers comply with the technical conditions prescribed in Annex 7 of

the TIR Convention, 1975, and Annex 4 of the Customs Convention on Containers, 1972. The certificate shall be valid for the number of containers approved.

(2) Design type approved.

A Certifying Authority shall issue a single certificate of approval conforming to the model in Appendix 2, Part II to Annex 7 of the TIR Convention, 1975, and Appendix 2 to Annex 5 of the Customs convention on Containers, 1972, for containers approved by design type when it has been ascertained that the container type complies with the technical conditions prescribed in Annex 7 of the 1975 TIR Convention, and Annex 4 of the Customs Convention on Containers, 1972. The certificate shall be valid for all containers manufactured in conformity with the specifications of the type approved.

(c) *Provisions common to both approval procedures.*

The certificate of approval issued pursuant to paragraphs (a) and (b) of this section shall be valid for either the specific number of containers approved, or for an unlimited series of containers of the approved type.

§ 115.11 Establishment of fees.

(a) Each Certifying Authority shall establish and file with the Commissioner a schedule of fees for the performance of the certification procedures under this chapter. The fees shall be based on the costs (including transportation expense) actually incurred by the Certifying Authority. The fees are subject to approval by the Commissioner before their use by the Certifying Authority.

(b) Each Certifying Authority shall make available a schedule of its fees approved by the Commissioner. In addition, the schedules of approved fees for all the Certifying Authorities are available from the Headquarters, U.S. Customs Service, Office of Inspection and Control, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

§ 115.12 Records maintained by Certifying Authority.

(a) Each Certifying Authority shall maintain—

(1) A copy of each individual certificate of approval issued, together with a copy of the plans and the application to which the approval refers, along with any information submitted by the manufacturer and/or owner or operator for the certification of a container or a road vehicle.

(2) A record of each serial number assigned and affixed by the manufacturer to the road vehicles and containers manufactured under a design type approval, and containers approved at a stage after manufacture.

(b) The Commissioner may examine the Certifying Authority's files required by paragraph (a) of this section.

§ 115.13 Records to be furnished Customs.

Each Certifying Authority shall furnish the Headquarters, U.S. Customs Service, Office of Inspection and Control, 1301 Constitu-

tion Avenue, NW., Washington, D.C. 20229, unless waived by Customs;

(a) A copy of each issued certificate of approval for containers and road vehicles and a copy of the plans and application to which the approval refers;

(b) A copy of each issued individual approval for a container or road vehicle.

§ 115.14 Meeting on program.

If determined necessary by Customs, each Certifying Authority's representative for certification functions shall meet, after notice, with the Commissioner to review their administration of the certification program.

§ 115.15 Reports by road vehicle or container manufacturer.

Each manufacturer shall forward to the appropriate Certifying Authority, quarterly or when otherwise requested by that Authority:

(a) The registration number or other identifying information on road vehicles, or serial numbers assigned to containers manufactured under a certificate of approval by design type; and

(b) An attestation that each road vehicle or container to which a serial number was assigned was manufactured in full compliance with the certificate of approval by design type.

§ 115.16 Notification of Certifying Authority by manufacturer.

In order that the Certifying Authority can schedule an appropriate inspection, a manufacturer shall give notification to that Authority before each production run of road vehicles or containers to be built pursuant either to plans approved by the Certifying Authority, or revised plans (approved or unapproved).

§ 115.17 Appeal to Commissioner of Customs.

(a) Any manufacturer, carrier, or owner may, within 30 days after he has been notified by a Certifying Authority of an adverse determination, including any review provided, appeal that determination to the Commissioner.

(b) Any determination which is appealed remains in effect pending a decision by the Commissioner.

§ 115.18 Decision of Commissioner of Customs final.

The decision of the Commissioner on any matter appealed to him is final.

SUBPART C—PROCEDURES FOR APPROVAL OF CONTAINERS BY DESIGN TYPE

§ 115.25 General.

The Certifying Authority shall, at the request of a manufacturer, evaluate containers for approval by design type during the manufacturing stage.

§ 115.26 Eligibility.

Any manufacturer of containers to be manufactured in a type series from standard design and specifications so that each container has identical characteristics, may apply for approval by design type.

§ 115.27 Where to apply.

A manufacturer may apply for approval of a container by design type to a Certifying Authority of the country in which the container is manufactured if such country is a contracting party to the TIR Convention, 1975, or the Customs Convention on Containers, 1972.

§ 115.28 Application for approval.

Each application by a manufacturer or an owner for certification of a container by design type must include:

(a) Three copies, each on larger than 3 feet by 4 feet, of the Customs and TIR/Container plan;

(b) Customs and TIR/Container plan number;

(c) Three copies of the specifications which include the following information:

(1) The name and address of the manufacturer and the owner; and

(2) A description of the container including the—

(i) Type of construction;

(ii) Dimensions;

(iii) Material of construction;

(iv) Coating system used;

(v) Identification marks and numbers; and

(vi) Tare weight;

(d) The location and date for inspection; and

(e) A statement signed by the manufacturer that:

(1) A container of the design type concerned is available for inspection and approval by the Certifying Authority before, during, and after the production run;

(2) Notification will be given to the Certifying Authority of each change in the design before adoption; and

(3) Each container will be marked with:

(i) The metal plate required in § 115.32;

(ii) The identification number or letter of the design type assigned by the manufacturer; and

(iii) The serial number of the container assigned by the manufacturer.

§ 115.29 Plan review.

(a) A manufacturer or owner who wants containers to be approved by design type must submit the plans and specifications for the container to the Certifying Authority.

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(b) The Certifying Authority examining the plans and specifications submitted in accordance with paragraph (a) of this section shall:

(1) Approve the plans and specifications in accordance with the requirements of § 115.30 and arrange to inspect a container in accordance with § 115.31; or

(2) Advise the applicant of any necessary changes to be made for compliance with the requirements of § 115.30.

(c) If changes in the design of the container are made during production but after approval of the plans and specifications by the Certifying Authority and furnish it with "as-built" drawings of the container so that the plans can be reviewed and one or more containers inspected during the production stage to confirm that they continue to comply with the requirements of § 115.30.

§ 115.30 Technical requirements for containers by design type.

The plans and specifications of a container submitted in accordance with the requirements contained in § 115.29, and the one or more containers inspected in accordance with the requirements of § 115.31, must comply with the requirements of Annex 7 of the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (TIR Convention), November 14, 1975 (TIAS), and Annex 4 of the Customs Convention on Containers (Container Convention), December 2, 1972. Copies of Annex 7 and Annex 4 may be obtained from the Headquarters, U.S. Customs Service, Office of Inspection and Control, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

§ 115.31 Examination, inspection, and testing.

(a) Before the issuance of a certificate of approval by design type, the Certifying Authority shall:

(1) Make a physical examination of one or more containers of the production series concerned;

(2) Assure itself as to the adequacy of the manufacturer's system to control quality of materials used, manufacturing methods, and finished containers; and

(3) Require the manufacturer to make available to the Certifying Authority records of material, including affidavits furnished by suppliers.

(b) The Certifying Authority shall conduct such examinations, inspections, and tests of the production run containers as it deems necessary.

§ 115.32 Approval plates.

The manufacturer shall affix, in a clearly visbile place on or near one of the doors or other main openings of each container manufactured to the approved design, a metal approval plate measuring at least 20 by 10 centimeters (7.8 by 3.9 inches). The following shall be embossed on or stamped into the surface of the approval plate:

(a) "Approved for transport under Customs seal."

(b) "USA/(number of the certificate of approval)/(last two digits of year of approval)." (e.g. "USA/1600/84" means "United States of America certificate of approval number 1600, issued in 1984)." A two digit alpha suffix may be added to the certificate of approval number to identify the Certifying Authority, e.g., USA/1600–AB/85, USA/1600–IB/85.

(c) Identification of the type of container and of the number of the container in the type series.

(d) The serial number assigned to the container by the manufacturer (manufacturer's number).

§ 115.33 Termination of approval.

Any container, the essential features of which are changed, shall no longer be covered by the design type approval. Such a container may be made available to a Certifying Authority for inspection and individual approval in accordance with subpart D of the part. However, repairs in kind do not constitute a change of the essential features.

Subpart D—Procedures for Approval of Containers After Manufacture

§ 115.37 General.

This subpart provides for the approval and certification of containers after manufacture, and for those altered so as to void their design type approval.

§ 115.38 Application.

A written request for approval of a container after manufacture may be made by the owner or operator to a Certifying Authority and must include the following:

(a) Three copies, each no larger than 3 feet by 4 feet, of the Customs and TIR/Container plan;

(b) Customs and TIR/Container plan number;

(c) Three copies of the specifications which include the following information:

(1) Type of container;

(2) Name and business address of applicant;

(3) Identification marks and numbers;

(4) Tare weight;

(5) Nominal overall dimensions in centimeters;

(6) Type of construction and essential particulars of structure (nature of materials, coating system used, parts which are reinforced, whether bolts are riveted or welded, and similar matters); and

(7) Proposed location and date for inspection of the container.

§ 115.39 Eligibility.

The owner or operator may submit containers to be approved after the manufacturing stage to:

(a) The Certifying Authority of the country of manufacture if such country is a contracting party to the Convention.

(b) The Certifying Authority of the country where the owner or operator is resident or established, when such Certifying Authority has representatives located in the country of manufacture, which is a noncontracting party to the Convention.

(c) The Certifying Authority of the country where a container is used for the first time for transport of merchandise under Customs seal or where it is otherwise physically located.

§ 115.40 Technical requirements for containers.

A container that is submitted for inspection for approval after manufacture must comply with the requirements of Annex 7 of the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (TIR Convention), November 14, 1975 (TIAS) and Annex 4 of the Customs Convention on Containers (Container Convention), December 2, 1972. Copies of Annex 7 and Annex 4 may be obtained from the Headquarters, U.S. Customs Service, Office of Inspection and Control, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

§ 115.41 Certificate of approval for containers approved after manufacture.

The Certifying Authority shall issue an individual certificate of approval for each container that meets the requirements in § 115.40.

§ 115.42 Approval Plates.

(a) The owner or operator applicant shall, upon receipt of a certificate of approval from the Certifying Authority, affix an approval plate in the manner specified for containers approved by design type (see § 115.32).

(b) Although an entry is not required in the space provided for type identifiers on an approval plate for containers approved after manufacture, identification number and letters indicating that a series of containers comply with the same specifications may be placed in such space. This may be used to assist in the identification of a series of containers in which a common defect may be discovered subsequent to certification. In such case the approval number on the plate shall be altered by an addition to the second or third element of such number. The specific method of altering the approval number may be established by each Certifying Authority, for containers approved by it, and communicated to the U.S. Customs Service.

(c) Two possible methods of accomplishing this are:

(1) Placing an "X" in front of the numeric portion of the middle element of the approval number, e.g., USA/X123–IB/85.

(2) Placing a suffix at the end of the approval number, e.g. USA/123–AB/85–01.

§ 115.43 Termination of approval.

Approval of a container terminates upon a change in the container by a major repair or alteration of any of the essential features required in § 115.40. Repairs by replacement in kind do not constitute a change of the essential features.

Subpart E—Procedures for Approval of Individual Road Vehicles

§ 115.48 General.

This subpart provides for the approval and certification of individual road vehicles that comply with the technical requirements in § 115.51.

§ 115.49 Application.

A written request for approval of an individual road vehicle may be made by the owner, or carrier to a Certifying Authority and must include:

(a) Three copies, each no longer than 3 feet by 4 feet, or the Customs and TIR plan;

(b) Customs and TIR plan number;

(c) Three copies of the specifications which include the following information:

(1) Type of vehicle;

(2) Name and business address of owner or operator;

(3) Name of the manufacturer;

(4) Chassis number;

(5) Engine number (if applicable);

(6) Registration number;

(7) Particulars of construction;

(8) Any photos or diagrams required by the Certifying Authority to facilitate approval; and

(9) A proposed place and date for inspection of the road vehicle.

§ 115.50 Eligibility.

A road vehicle may be submitted for inspection by its owner or operator to a Certifying Authority of the country in which the owner or operator is a resident or is established, or where the vehicle is registered.

§ 115.51 Technical requirements.

A road vehicle that is submitted for inspection for individual approval must comply with the requirements of Annex 2 of the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (TIR Convention), November 14, 1975, (TIAS). Copies of Annex 2 may be obtained from the Headquarters, U.S.

Customs Service, Office of Inspection and Control, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

§ 115.52 Approval.

The Certifying Authority shall issue a certificate of approval, valid for 2 years, to each road vehicle that complies with the applicable requirements in § 115.51.

§ 115.53 Certificate of approval.

A certificate of approval must be kept on the vehicle as evidence of approval.

§ 115.54 Renewal of certificate.

A certificate of approval may be renewed if the Certifying Authority determines by inspection every 2 years that the vehicle continues to comply with the applicable requirements in § 115.51.

§ 115.55 Termination of approval.

Approval of a road vehicle terminates:

(a) Upon expiration of the certificate of approval; or

(b) Upon a change in the road vehicle by a major repair or alteration of any of the essential features required in § 115.51. Repairs by replacement in kind do not constitute a change of the essential features.

SUBPART F—PROCEDURES FOR APPROVAL OF ROAD VEHICLES BY DESIGN TYPE

§ 115.60 General.

This subpart provides for the approval and certification of road vehicles manufactured by design type.

§ 115.61 Eligibility.

Any manufacturer of road vehicles which are being manufactured in a type series from a standard design and specifications, so that each road vehicle has identical characteristics, may apply for an approval by design type.

§ 115.62 Where to apply.

A manufacturer may apply for approval of a road vehicle by design type to a Certifying Authority of the country in which the road vehicle is manufactured, if such country is a contracting party to the TIR Convention, 1975.

§ 115.63 Application for approval.

Each application by a manufacturer for certification of a road vehicle by design type must include:

(a) Three copies, each no larger than 3 feet by 4 feet, of the Customs and TIR plan;

(b) Customs and TIR plan number;

(c) Three copies of the specifications which include the following information:

(1) The name and address of the manufacturer and the owner; and

(2) A description of the road vehicle including the:

(i) Particulars of construction;

(ii) Dimensions;

(iii) Construction materials; and

(iv) Marks and numbers, including chassis, engine, and registration numbers.

(d) A statement signed by the manufacturer that:

(1) It will present vehicles of the type concerned to the Certifying Authority which that Authority may wish to examine;

(2) Permit the Certifying Authority to examine further units at any time during or after the production run;

(3) Notify the Certifying Authority of each change in the design or specifications before adoption;

(4) Mark the road vehicles in a visible place with the identification number or letters of the design type and the serial number of the vehicle in the type series manufacturer's number; and

(5) Keep a record of vehicles manufactured according to the design type.

§ 115.64 Plan review.

(a) A manufacturer or owner who wants road vehicles to be approved by design type must submit the plans and specifications of the road vehicles to the Certifying Authority.

(b) The Certifying Authority that examines the plans and specifications submitted in accordance with paragraph (a) of this section shall:

(1) Approve the plans and specifications in accordance with the requirements of § 115.65 and arrange to inspect a road vehicle in accordance with § 115.66; or

(2) Advise the applicant of any necessary changes to be made for compliance with the requirements of § 115.65.

(c) If changes in design of the road vehicle are made during production but after approval of the plans and specifications by the Certifying Authority, the manufacturer shall immediately notify the Certifying Authority and furnish it with "as-built" drawings of the road vehicle so that the plans can be reviewed and one or more road vehicles inspected during the production stage to confirm that they continue to comply with the requirements of § 115.65.

§ 115.65 Technical requirements for road vehicles by design type.

The plans and specifications of a road vehicle that are submitted in accordance with the requirements contained in § 115.64, and the one or more road vehicles that are inspected in accordance with the requirements of § 115.66, must comply with the requirements of Annex 2 of the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (TIR Convention), November

14, 1975 (TIAS). Copies of Annex 2 may be obtained from the Headquarters, U.S. Customs Service, Office of Inspection and Control, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

§ 115.66 Examination, inspection, and testing.

(a) Before the issuance of a certificate of approval by design type, the Certifying Authority shall:

(1) Make a physical examination of one or more vehicles of the production series concerned;

(2) Assure itself as to the adequacy of the manufacturer's system to control quality of materials used, manufacturing methods, and finished road vehicles; and

(3) Require the manufacturer to make available to the Certifying Authority records of materials, including affidavits furnished by suppliers.

(b) The Certifying Authority shall conduct such examinations, inspections, and testing of the production run road vehicles as it deems necessary.

§ 115.67 Approval certificate.

The holder of the approval certificate shall, before using the vehicle for the carriage of goods under the cover of a TIR Carnet, fill in as may be required on the approval certificate:

(a) The registration number given to the vehicle (item No. 1); or

(b) In the case of a vehicle not subject to registration, particulars of his name and business address (item No. 8). (See Annex 4 of the Convention for model of certificate of approval).

§ 115.68 Termination of approval.

Any road vehicle whose essential features are changed shall no longer be covered by the design type approval. Such a road vehicle may be made available to a Certifying Authority for inspection and individual approval in accordance with subpart E of this part. However, repairs in kind do not constitute a change of the essential features.

WILLIAM VON RAAB,
Commissioner of Customs.

Approved: April 17, 1986.
FRANCIS A. KEATING II,
Assistant Secretary of the Treasury.

[Published in the Federal Register, May 1, 1986 (51 FR 16159)]

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19 CFR Part 101

(T.D. 86-93)

Change in Hours of Customs Service Provided at Neche, North Dakota

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Change in hours of service.

SUMMARY: This document reduces the hours of service currently provided at the Customs port of entry at Neche, North Dakota, located on the U.S.-Canadian border, in the Pembina, North Dakota, Customs District.

Because the traffic at Neche does not justify the current 8:00 a.m. to midnight schedule, service between 8:00 a.m.–9:00 a.m. and 10:00 p.m.–midnight is being eliminated. The Customs port of Pembina, just 16 miles east of Neche, is in operation 24 hours daily and can easily absorb any additional workload.

This change will enable Customs to obtain more efficient use of its personnel, facilities, and resources. Further, it will not have any major adverse impact on industry, transportation, or the local population.

EFFECTIVE DATE: June 2, 1986.

FOR FURTHER INFORMATION CONTACT: Bernie Harris, Office of Inspection and Control, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–8157).

SUPPLEMENTARY INFORMATION:

Background

Section 101.6, Customs Regulations (19 CFR 101.6), provides that each Customs office shall be open for the transaction of Customs business between the hours of 8:30 a.m. and 5:00 p.m. on all days of the year except Saturdays, Sundays, and national holidays. It also provides that services performed outside a Customs office generally shall be furnished between the hours of 8:00 a.m. and 5:00 p.m. However, because of local conditions, different but equivalent hours may be necessary to maintain adequate and efficient service.

The Customs port of entry of Neche, North Dakota, located on the U.S.-Canadian border in the Pembina, North Dakota, Customs District is currently open and staffed from 8:00 a.m. to midnight, daily. A recent survey showed that there is an average daily total of less than 10 trucks and other vehicles entering the U.S. through Neche from Canada during the hours of 8:00 a.m.–9:00 a.m. and 10:00 p.m.–midnight. The Customs port of entry at Pembina, North Dakota, which is 16 miles east of Neche, is open for operation 24 hours daily.

Due to the minimal traffic using the port of entry, and current budgetary constraints, Customs published a notice in the Federal Register on November 5, 1985 (50 FR 45957), proposing the elimination of those 3 hours of sevice at the port of Neche. The proposal was consistent with Customs nationwide efforts to obtain more efficient use of personnel, facilities, and resources, and would save one full-time position. In addition, the reduction in hours would not

have any major adverse impact on industry, transportation, or the local residents because of the close proximity to Pembina which could easily absorb any additional workload. Public comments were invited on the proposal.

Disscussion of Comments

There were 21 responses to the proposal, including one containing a petition signed by 167 area residents. All of the commenters opposed the reduction; some for personal reasons, others, for business reasons.

Personal reasons for opposing the change included the disruption to schedules, increased travel time, and the possible weakening of cultural and social ties between U.S. and Canadian neighbors.

Business reasons cited included inconvenience to shoppers and the possible negative impact the change might have on future economic growth.

Although Customs sympathizes with persons inconvenienced by the reduced hours, there does not appear to be a potential significant impact on either area residents or businesses. Eliminating the 3 hours specified is in keeping with Customs goal of using our limited resources as efficiently as possible. Customs realizes that every reduction in hours of service is an inconvenience to some person or business in the area affected. However, based on the minimal amount of traffic using Neche during the hours being eliminated, Customs believes the saving of one full-time position and the more efficient use of personnel, facilities, and resources is justified in this instance.

Accordingly, after consideration of the comments, and further review of the matter, Customs has determined that it is necessary to make the change as proposed.

Change in Hours of Service

Customs service at the port of entry of Neche, North Dakota, will be provided between the hours of 9:00 a.m.–10:00 p.m., daily. No service will be provided from 8:00 a.m.–9:00 a.m., or from 10:00 p.m.–midnight.

Drafting Information

The principal author of this document was John Doyle, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

William von Raab,
Commissioner of Customs.

Approved: April 8, 1986.

FRANCIS A. KEATING II,
Assistant Secretary of the Treasury.

[Published in the Federal Register, May 1, 1986 (51 FR 16158)]

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19 CFR Parts 141 and 178

(T.D. 86-94)

Customs Regulations Amendment Relating to Additional Information on Invoices for Imported Footwear

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by updating the information required on invoices of imported footwear. Customs had determined that much of the information now required, which generally is descriptive of footwear, no longer is necessary, and that other information, relating to the construction of footwear, is needed. The information is used by Customs to establish the correct tariff classification and value of imported footwear for duty and/or quota urposes.

EFFECTIVE DATE: May 30, 1986.

FOR FURTHER INFORMATION CONTACT:

Legal Aspects: Donald F. Cahill, Classification and Value Division (202-566-8181);

Operational Aspects: Alex Olenick, Duty Assessment Division (202-566-5307); Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

Technical Aspects: James Sheridan, National Import Specialist, New York Region (212-466-5889; FTS-668-5889).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Invoices of merchandise imported into the U.S. are required by § 481, Tariff Act of 1930 (19 U.S.C. 1481), to include certain specified information and "any other facts deemed necessary to a proper appraisement, examination, and classification of the merchandise that the Secretary of the Treasury may require." Section 141.89(a), Customs Regulations (19 CFR 141.89(a)), requires additional information on invoices of footwear classifiable under Schedule 7, Part 1A, Tariff Schedules of the United States (19 U.S.C. 1202). The additional information assists Customs in establishing the correct tariff classification and value of imported footwear for duty and/or quota purposes.

Footwear manufacturing methods have changed since the additional reporting requirements were established. Approximately

seven new distinctions in footwear construction which result in classification differences are effective for footwear imports since July 1, 1981 (Pub. L. 96–39, July 26, 1979, § 223(b)(2)). As a result, much of the information now required, which generally is descriptive of footwear, no longer is necessary, and other information, relating to the construction of footwear, is needed. Accordingly, Customs proposed to amend § 141.89(a) to reflect those changes and to update the information reporting requirements.

The original notice proposing to amend § 141.89(a) was published in the Federal Register on July 28, 1978 (43 FR 32819). Essentially, that proposal requested comments on questions concerning the materials used in the manufacture of imported footwear, as well as the nature of the manufacturing process itself. After consideration of the comments received in response to that notice, it was determined advisable to expand the previous proposal's questions regarding the materials used in the manufacture of footwear, so that the information received would be adequate as an aid in the correct classification. The new proposal, published in the Federal Register on May 1, 1984 (49 FR 18543), also provided certain definitions to be used in completing footwear invoices, clarified the question concerning material(s) of chief value, and revised Customs Form 5523, titled "Invoice Details For Footwear." Specifically, importers were asked to provide the following information with regard to imported footwear on Customs Form 5523.

(1) Manufacturer's style number.
(2) Importer's style number.
(3) Type of shoe:
(i) After ski boot
(ii) Basketball shoe
(iii) Beachcomber
(iv) Boat shoe
(v) Clog
(vi) Disposable, not rubber or plastic
(vii) Espadrille
(viii) Field (Football/Soccer/Astroturf) shoe
(ix) Hiking boot
(x) Inner liner
(xi) Jogger/Training shoe
(xii) Kung-Fu shoe
(xiii) Moccasin/Soled moccasin
(xiv) Oxford
(xv) Popsicle
(xvi) Pump
(xvii) Rubber/Plastic Protective and Waterproof footwear
(xviii) Rubber/Plastic Ski boot
(xix) Slipper
(xx) Slipper sock
(xxi) Spiked Track shoe

(xxii) Tennis shoe
(xxiii) Workboot
(xxiv) Woven bootie
(xxv) Zori
(xxvi) Other (specify)

(4) Component materials of upper with value percentage of each component. If chief value of upper is fiber, and weight of entire shoe is neither 50 percent rubber or plastic, state the percentage by weight and value of each fiber used in the upper.

(5) Component materials of entire article with value percentage of each component. If the materials in (4) and (5) are primarily of leather, answer only (8) and (12). Otherwise answer all questions.

(6) Component materials of sole with value percentage of each component.

(7) Percentage of weight of entire article:
(i) Fiber
(ii) Rubber and/or plastic
(iii) Other (specify material)

(8) Percentage of exterior surface area of the upper:
(i) Leather
(ii) Rubber and/or plastic
(iii) Other (Specify material)

(9) Is there a foxing or foxing-like band around bottom of upper? If so, specify component materials of the band.

(10) Does the sole overlap the upper? If so, specify the part(s) of the upper overlapped.

(11) Does the upper extend over the ankle?

(12) Type of construction:
(i) Stitched-Turned
(ii) Stitched-Goodyear Welt
(iii) Stitched-Welt other than Goodyear
(iv) Stitched-Slip-lasted (California)
(v) Stitched-Other (specify method)
(vi) Exclusively Adhesive (Cement)
(vii) Shell molded bottom cemented and/or stitched to upper
(viii) Unit molded bottom cemented to upper
(ix) Rolled Sole
(x) Sole simultaneously molded and attached to upper (Simultaneous injection)
(xi) Vulcanized
(xii) Riveted, Nailed or Stapled
(xiii) Unsoled Moccasin
(xiv) Combination of the above (specify types combined)
(xv) Other (specify)

(13) Is the shoe of the slip-on type, i.e., no laces, buckles or other fasteners?

(14) Does the upper have either an open toe or an open heel?

Comments on this proposal were to have been received by July 2, 1984. However, due to the complexity of the issues involved, by notice published in the FEDERAL REGISTER on July 9, 1984 (49 FR 27954), the comment period was extended to August 3, 1984.

Twelve comments were received in response to the proposal. Most of the commenters objected to the expanded information requirement as placing an inordinate burden on importers to collect and process many items of information not necessary for the classification of many types of footwear. Their specific comments and our responses follow.

DISCUSSION OF COMMENTS

Comment: The lists of types and construction of shoes in proposed § 141.89(a) are too lengthy. Customs Form 5523, which would reflect the requirements in the proposal, is merely a basic entry form to aid in the classification of footwear. It need not be the most detailed and exhaustive footwear submission possible.

Response: We agree. Therefore, we are eliminating the exhaustive lists in favor of a requirement for a scaled down description of the imported footwear in terms normally used in the trade, with examples of the type, method of construction, and kind of construction provided only on the list of instructions for the final Customs Form 5523. Furthermore, we are reducing the number of examples of types of footwear from 26 to 11.

It is estimated that 25 percent of all footwear imports will require completion of only items 1 through 7, and that items 1 through 5 and 8 through 10 will need to be filled in on another 25 percent of imports. Items 1 through 5 and 8 will need to be filled in on 10 percent of imports, and 40 percent will not require the completion of a footwear invoice or an equivalent document. In no case will all items on the footwear invoice or other document be required to be completed.

Comment: Many of the terms mentioned in the proposal, such as "foxing" and "overlap", are difficult to apply to specific importations and lend themselves to misinterpretation.

Response: Providing specific definitions for all the terms used would render the document and invoice more cumbersome than now. However, we are adding a definition for the term "foxing-like band" since this term applies to many footwear importations. Also, we are deleting some definitions contained in the proposal, which we believe are unnecessary.

Comment: The requirement for information on percentage value is not necessary for proper classification of imported footwear. Only component material of chief value should be required.

Response: We agree. Therefore, we are removing the requests for percentage value, which were contained in several items in the proposal. However, Customs may request this or any other informa-

tion on specific imports as may be necessary to properly classify the imported footwear.

After consideration of the comments received and upon further review of the matter, it has been deemed advisable to adopt the proposed amendment to § 141.89(a), Customs Regulations, with the modifications noted above. Final Customs Form 5523, which has been revised to reflect the information required in items 1 through 10 of § 141.89(a), may not be available at the time of publication of this document. Accordingly, Customs field offices may accept the existing Customs Form 5523 (3/2/78 version) or the proposed Customs Form 5523 (6/11/85 version) until the new form is available.

Executive Order 12291

It has been determined that the amendment is not a "major rule" within the criteria provided in § 1(b) of E.O. 12291, and therefore no regulatory impact analysis is required.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), it is certified that this amendment will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 or 604.

Paperwork Reduction Act

The collection of information requirements contained in § 141.89(a) are subject to provisions of the Paperwork Reduction Act (44 U.S.C. 3504(h)) and have been cleared by the Office of Management and Budget (OMB). Accordingly, Part 178, Customs Regulations (19 CFR Part 178), which lists the information collections contained in the regulations and the control numbers assigned by OMB, is being amended to include OMB Control Number 1515–0047.

Drafting Information

The principal author of this document was Susan Terranova, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Parts 141 and 178

Customs duties and inspection, Imports, Reporting and recordkeeping requirements, Collections of information.

AMENDMENTS TO THE REGULATIONS

PART 141—ENTRY OF MERCHANDISE

1. The general citation authority for Part 141 continues to read as follows:

AUTHORITY: 19 U.S.C. 66, 1448, 1484, 1624; Section 141.89 also issued under 19 U.S.C. 1202 (Gen. Hdnote 11), 1481.

2. Section 141.89(a), Customs Regulations (19 CFR 141.89(a)), is amended by revising the paragraph for footwear to read as follows:

§ 141.89 Additional information for certain classes of merchandise.

(a) * * *

Footwear, classifiable under Schedule 7, Part 1A, Tariff Schedules of the United States (19 U.S.C. 1202)—

(1) The manufacturer's style number
(2) The importer's style and/or stock number
(3) Type of shoe
(4) Percentage by weight of entire article:
(i) fiber
(ii) rubber and/or plastic
(iii) other (specify)
(5) Percentage of exterior surface area of the upper
(i) leather
(ii) rubber and/or plastic
(iii) other (specify)

If item 4(ii) is 10 percent or more, if item 4(iii) is less than 50 percent *and* if item 5(i) is less than 50 percent, omit items 6 and 7 and provide the information requested in items 8 through 12 below. If one or more of these conditions are not met, provide the information requested in items 6 and 7 and omit items 8 through 12.

(6) Component material of chief value in
(i) upper
(ii) sole
(iii) entire article
(7) Method of construction
(8) Kind of construction
(9) Whether slip-on type (no laces, buckles, or other closures)
(10) Whether upper has open toe or open heel
(11) Does shoe have foxing or foxing-like band? If so, state material(s).
(12) Whether sole overlaps upper

The information requested in items 1 through 10 may be furnished on Customs Form 5523 or other appropriate format by the exporter, manufacturer or shipper. However, the information requested in items 11 and 12 must be furnished by the importer.

Definitions

For the purpose of this section, the following terms have the approximate definitions below. If either a more complete definition or a decision as to its application to a particular article is needed, the maker or importer of record (or the agent of either) should contact Customs prior to entry of the article.

(a) *Fiber.* "Fiber" means a material made from cotton, other vegetable fibers, wool, hair, silk, or man-made fibers. The term "man-made" fibers includes filaments and strips. Note: Cork, wood, cardboard, and leather are not "fibers".

(b) *Foxing-like band.* "Foxing-like band" means a strip of material, which is attached to the side or the top of the outsole or is molded of the same piece as the outsole and which overlaps the upper.

(c) *Turned.* "Turned" means that construction in which the upper is sewn to the sole while the shoe is turned inside out.

(d) *Upper.* "Upper" means everything above insole level.

(e) *Welt.* "Welt" means that construction in which a separate strip (the welt) is attached to the edge of the sole and in which the welt, the upper and a lip on the surface of the insole are stitched together with a single stitch.

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

19 CFR Part 178 is amdnded as follows:

1. The general authority citation for Part 178 is revised to read as follows:

AUTHORITY: 5 U.S.C. 301, 19 U.S.C. 1624, 44 U.S.C. 3501 *et seq.*

2. Section 178.2, Customs Regulations (19 CFR 178.2), is amended by inserting the following in appropriate numerical sequence according to the section number under the columns indicated:

§ 178.2 Listing of OMB Control Numbers.

* * * * * * *

19 CFR section	Description	OMB Control No.
§ 141.89(a).....	Additional information on invoices for imported footwear.	1515-0047

ALFRED R. DE ANGELUS,
Acting Commissioner of Customs.

Approved: April 11, 1986.
FRANCIS A. KEATING II,
Assistant Secretary of the Treasury.

[Published in the Federal Register, April 30, 1986 (51 FR 16012)]

U.S. Court of Appeals for the Federal Circuit

ERRATUM

(Appeal No. 86–560)

AMERICAN LAMB CO., ET AL., APPELLEES *v.* UNITED STATES, APPELLANT, AND NEW ZEALAND MEAT PRODUCTS BOARD, ET AL., INTERVENORS

In CUSTOMS BULLETIN, volume 20, No. 11, dated March 19, 1986, appearing on page 20, 17th line from the bottom, delete "380 U.S. 1, 85 (1964)" and insert in lieu thereof "380 U.S. 1, 16 (1964)".

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

Chief Judge

Edward D. Re

Judges

Paul P. Rao
James L. Watson
Gregory W. Carman
Jane A. Restani
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Thomas J. Aquilino, Jr.

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Bernard Newman

Samuel M. Rosenstein

Nils A. Boe

Clerk

Joseph E. Lombardi

Decisions of the United States Court of International Trade

(Slip Op. 86–41)

HERAEUS-AMERSIL, INC., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 80–9–01501

Before DICARLO, *Judge.*

Plaintiff seeks classification of merchandise consisting of rolled precious metal contact tape as parts of electrical relays under item 685.90 of the Tariff Schedules of the United States (TSUS). Defendant concedes that the merchandise was erroneously classified and contends it is properly classified under item 605.66, TSUS, as other semimanufactured rolled precious metals.

Held: The contact tape is so far advanced in manufacture as to be dedicated solely for use as contacts for electrical relays and is classifiable under item 685.90, TSUS. Merchandise consisting of small articles manufactured together in one piece is classifiable as if already cut apart. Positioning and welding of the contact tape are steps towards integrating the contacts into the relays.

[Judgment for plaintiff.]

(Decided April 18, 1986)

Fitch, King and Caffentzis (Richard C. King) for plaintiff.

Richard K. Willard, Assistant Attorney General, *Joseph I. Liebman,* Attorney in Charge, International Trade Field Office, Civil Division, Department of Justice *(Susan Handler-Menahem)* for defendant.

MEMORANDUM OPINION AND ORDER

DICARLO, *Judge:* Plaintiff contests the classification under item 605.05, Tariff Schedules of the United States (TSUS), of two entries of precious metal contact tape from the Federal Republic of Germany claiming that the correct classification is under item 685.90, TSUS. Defendant now seeks classification under item 605.66, TSUS. Since defendant concedes that Customs classification was erroneous, no presumption of correctness attaches to the classification urged by defendant. *See Jarvis Clark Co.* v. *United States,* 773 F.2d 873, *reh'g denied,* 739 F.2d 628 (Fed. Cir. 1984).

The question presented is whether the tapes are (1) advanced beyond the state of materials and are contacts which are parts of relays described under item 685.90, TSUS, or (2) not advanced beyond the state of materials so that classification is proper under item 605.66, TSUS, as semimanufactured rolled precious metal.

The Court holds that the tapes are properly classified as parts of relays under item 685.90, TSUS.

The case was submitted to the Court on the following stipulated facts:

1. The merchandise involved in this action consists of contact tape composed of two layers, the upper being (by weight) 91.7% gold/8.3% silver, and the lower 60% palladium/40% silver.

2. The tape was imported wound in continuous lengths on Western Electric No. 544 Delrin Reels. Each reel was marked "R156", and each reel was labeled showing the gross, net, and tare weights in grams. Each reel was wrapped with a minimum of one layer of thin polyethelene strip, and was packed in a carton or box with packing surrounding each reel. Certificates of compliance to the Western Electric purchase specification and a laboratory chemical analysis report of major constituents accompanied each shipment.

3. The imported merchandise was manufactured to, and conforms to, Western Electric Specification 900128547.

4. The imported merchandise was designed for, and used only as, contacts in AF-type telephone relays manufactured by Western Electric.

5. AF-type telephone relays are composed of a coil armature assembly and a contact spring pile-up assembly.

6. The contact spring pile-up assembly contains moveable sub-assemblies called contact springs and fixed contact sub-assemblies called transfer springs.

7. A relay can have as many as twelve moveable contact springs and six transfer springs.

8. The moveable springs in the spring pile-up assembly each have two precious-metal contacts.

9. The mating transfer spring has one contact for normally open operation and one contact for normally closed operation.

10. On the average there are twenty-four contacts in each relay.

11. Transfer springs and contact springs are designed in clusters in which four or six springs are held together by two webs.

12. The contact spring cluster is punched from a continuous strip of 0.006 inch phosphor-bronze material; the transfer spring cluster is punched from 0.025 inch copper nickel alloy.

13. The contact spring clusters and transfer spring clusters appear as depicted below:

[Diagrams omitted.]

14. The contacts are welded to the ends of the springs, which are located at Area A in the depiction under paragraph 13 of this Stipulation.

15. The shear strength requirements of the welds on the contacts are:

Contact spring—12 to 22 lbs.
Transfer spring—20 lbs. minimum

16. The maximum of 22 pounds on the contact spring weld serves to eliminate spring distortions which result from excessive welding temperatures.

17. The contacts are positioned on the springs to within ± 0.005 inch from the reference.

18. When assembled in a relay, the contact spring contacts and the relay spring contacts must have maximum mating of contact surfaces.

19. In the earliest designed welders which welded contacts to the contact springs, each contact had to be individually welded to the spring cluster.

20. Manufacturers of contact cluster springs and transfer cluster springs developed a manufacturing method by which contact tape could be welded to the tips of each of the springs of the spring cluster which had contacts attached, and then cut to the correct length to form a contact. This method avoided the problem of feeding contact slugs and resulted in greater accuracy in contact positioning.

21. To use the weld-then-cut contact tape application method requires that contact tape be fed over the tip of the spring in a direction that coincides with the longitudinal axis of the spring.

22. To use the weld-then-cut process, it is necessary to insure the weld strength of the welded contact can withstand the shearing force of cutting and that the contact form is not distorted.

23. The weld-then-cut process is now used to manufacture contact spring clusters and transfer spring clusters. This manufacturing process is performed by an automatic transfer spring welder for transfer spring clusters; and by an automatic contact spring welder for contact spring clusters.

24. The operations of the automatic contact spring welder and automatic transfer spring welder, and development and construction of the contact and transfer spring contacts are described in Exhibit 1 to this Stipulation, Califano and Scherb, *Spring Assemblies for [M]iniature Relays,* XII, The Western Electric Engineer (1968).

The stipulation further provides:

The entry papers and the following exhibits attached to the Stipulation are deemed admitted into evidence and may be considered by the Court without further foundation being laid:

Exhibit 1: Califano and Scherb, *Spring Assemblies for Miniature Relays, XII, The Western Electric Engineer (1968).*

Exhibit 2: Advertising Brochure published by Heraeus Volkert, entitled *"Precious Metal Contact Tapes."*

Exhibit 3: Advertising Brochure published by W.C. Heraeus GmbH, entitled *"Automatic Welding Machine, type KSA 600."*

Exhibit 4: A contact spring cluster with the top web cut and contacts welded in place.

Exhibit 5: A photograph of contact tape wound on a reel in the same condition as the merchandise involved in this action was imported.

A provision for parts includes unfinished parts which have been so far advanced in manufacture as to be dedicated solely to a specific use. *Geo. S. Bush & Co.* v. *United States,* 32 Cust. Ct. 316, 321, C.D. 1620 (1954); General Interpretive Headnote 10(h), TSUS. Whether the imported contact tapes are materials or unfinished parts depends on whether they were sufficiently advanced toward and dedicated to use as contacts for relays at the time of importation, and were capable of no other substantial commercial use. *See Finn Bros. Inc.* v. *United States,* 59 CCPA 72, 75–76, C.A.D. 1042, 454 F.2d 1404 (1972); *Paramount Import Export Co.* v. *United States,* 45 CCPA 82, 85–87, C.A.D. 677 (1958).

Defendant claims that the merchandise comes within the common meaning of the term "wire" and therefore comes under the definition of "semimanufactured" contained in Headnote 2(b) of Schedule 6, Subpart A, which covers item 605.66, TSUS. Defendant says the merchandise is not sufficiently advanced toward or dedicated for use as parts of relays since (1) it has more than one use and, (2) it undergoes significant processing after importation.

Defendant's contention that the contact tape has a variety of uses is based on plaintiff's advertising brochure (Exhibit 2) which states in part:

> A major application for precious metal tapes is electrical switch contacts, either movable contacts on relay springs or as fixed contacts on stationary blades (cressbar contact systems). Further applications include sliding and wiping contacts, plug connectors, controls sliders, card edge connector contacts, push-buttons, etc.

The brochure simply demonstrates the availability of many different kinds of precious metal tapes and their applications. The brochure does not state that tape designed solely for contacts in relays can be used for any other purpose.

Paragraphs three and four of the stipulation state that the contact tape was manufactured to particular specifications and that it was designed for, and used only as, contacts in certain telephone relays. The absence of any evidence of alternate uses may be considered by the Court in determining whether the merchandise is dedicated exclusively to its ultimate use. *See United States* v. *Nylonge Corp.,* 48 CCPA 55, 62–63, C.A.D. 764 (1961). Based on the stipulation, the photographic evidence, examination of all of the exhibits and the absence of evidence that the contact tape is adaptable to any use other than its actual use, the Court concludes that the importations are dedicated exclusively to use as contacts for relays.

Defendant also argues that the contact tape in its imported form has not been advanced beyond the state of materials because the tape must be cut after importation, and before cutting it is positioned on the relay transfer springs and welded to certain strength requirements. Defendant argues that until the tape undergoes such

processing, the contact tape is not identifiable as parts of relays. The Court disagrees.

The cases have consistently held that importations consisting of small articles manufactured together in one piece should be classified as if already cut apart:

> The rule * * * recognizes the fact that most small articles are not produced as individual or separate products * * *. The rule of decision is therefore established that where such articles are imported in the piece and nothing remains to be done except to cut them apart they shall be treated for dutiable purposes as if already cut apart and assessed according to their individual character or identity. This follows, however, only in case the character or identity of the individual articles is fixed with certainty and in case the woven piece in its entirety is not commercially capable of any other use.

United States v. *Buss & Co.*, 5 C.C.A. 110, 113, T.D. 34138 (1914).

In *United States* v. *Nylonge Corp., supra,* the Court held that blocks of sponge material which had not been cut into pads prior to importation were classifiable as finished or partly finished sponges rather than as blocks of cellulose compounds not made into finished or partly finished articles. 48 CCPA at 62–63; *see also R. T. Saunders & Co.* v. *United States,* 54 CCPA 53, C.A.D. 904 (1967).

More recently, the Court in *Doherty-Barrow of Texas, Inc.* v. *United States,* 3 CIT 228 (1982), held that steel strip dedicated for use in making steel bale ties and which needed only to be cut to length was dutiable as bale ties rather than as steel strip.

The Court disagrees with defendant's argument that the contact tapes must undergo significant processing before they can be classified as parts since they must be positioned and welded as described in paragraphs 14–23 of the Stipulation and Exhibits 1 and 3. Paragraph 19 of the Stipulation states that under the earliest designed welding process, each contact had to be individually welded to the spring cluster. The individual welding of the contacts was part of an assembly process in which contacts were integrated into the relay. While advancements in technology have provided a more efficient method of integrating the contacts into the relays, the process is still one of assembly. Therefore the Court finds it is irrelevant whether the contacts are welded and positioned before or after they are cut.

The cases relied on by defendant are distinguishable. In those cases, the merchandise was not stipulated or found to be dedicated to any particular use, or incapable of other uses. *See, e.g., Avins Industrial Products Co.* v. *United States,* 72 Cust. Ct. 43, C.D. 4503, 376 F. Supp. 879, *reh'g denied,* 72 Cust. Ct. 147, C.D. 4522 (1974), *aff'd,* 62 CCPA 83, C.A.D. 1150, 515 F.2d 782 (1975) (merchandise required further processing, was adaptable to other uses); *Dehler Signoret Corp.* v. *United States,* 7 Cust. Ct. 103, C.D. 545 (1941) (merchandise not dedicated to any particular use).

Judgment will be entered accordingly. So ordered.

(Slip Op. 86-42)

AL TECH SPECIALTY STEEL CORP., ET AL., PLAINTIFFS *v.* UNITED STATES, DEFENDANT

Court No. 84-08-01192

OPINION

[Defendant's motion to dismiss is denied; motion to intervene, is denied.]

(Decided April 22, 1986)

Collier, Shannon, Rill & Scott (David A. Marquist, Paul C. Rosenthal, Jeffrey S. Beckington) for plaintiffs.

Richard K. Willard, Assistant Attorney General, *David M. Cohen,* Director, Commercial Litigation Branch, *Platte B. Moring, III,* Civil Division, United States Department of Justice, for defendant.

Kirkpatrick & Lockhart (Glenn R. Reichardt) for proposed intervenor.

RESTANI, *Judge:* Plaintiffs filed a timely summons and complaint pursuant to 19 U.S.C. § 1516a(a)(2)(B)(iii) (1982 & West Supp. 1986), contesting an early antidumping determination made by the International Trade Administration (ITA) of the United States Department of Commerce (Commerce).[1] Plaintiffs' complaint alleged that ITA should have adjusted the cost of production calculation for Arbed Saarstahl GmbH (Saarstahl), one of the West German producers of the product under investigation, to account for domestic subsidies alleged to benefit that company. On February 18, 1985, plaintiffs filed a Motion for Judgment upon an Agency Record pursuant to Rule 56.1 of the Rules of this Court.

After examining plaintiffs' motion and the administrative record filed in this action, ITA concluded that it had erroneously neglected to address the above-mentioned issue. A consent order was then issued by this court suspending all proceedings in this action pending a determination on remand by ITA.

On remand, ITA again decided that subsidies should not be included in calculating the cost of production. ITA did, however, increase the dumping margin for Saarstahl from 8.09% to 19.35%, on the grounds that ITA had allegedly committed certain errors and omissions in the calculation performed in the early determination. Before the court at this time is defendant's motion to dismiss for lack of jurisdiction and Saarstahl's motion to intervene.

To support its motion to dismiss for lack of jurisdiction, defendant relies primarily on the Federal Circuit's decision in *Freeport Minerals Co.* v. *United States,* 758 F.2d 629 (Fed. Cir. 1985). The *Freeport Minerals* appeal arose out of the events surrounding the Court of International Trade's (CIT's) decision in *Chevron Standard Ltd.* v. *United States,* 5 CIT 174, 563 F. Supp. 1381 (1983). In that action, Chevron Standard, Ltd. (Chevron) challenged ITA's decision

[1] *Tool Steel from the Federal Republic of Germany, Early Determination of Antidumping Duty,* 49 Fed. Reg. 29,995 (1984).

to postpone revocation of an antidumping order. ITA had made a preliminary determination in an administrative review that Chevron and four other Canadian companies had refrained from selling the subject merchandise in the United States at less-than-fair value for a sufficient period of time to warrant revocation of the antidumping order as to the five companies. 46 Fed. Reg. 21,214, 21,215–16 (1981). In the final results of administrative review, however, ITA postponed revocation as to three of the five companies, including Chevron, in an attempt to have these three companies encourage another Canadian company, of which they were significant stockholders, to provide data sought by ITA. 47 Fed. Reg. 31,911, 31,912 (1982). The court in *Chevron Standard,* 5 CIT at 178, 563 F. Supp. at 1384, found ITA's failure to revoke the antidumping order as to Chevron to be unreasonable and remanded the case to ITA with an order to make a new determination in accordance with ITA's earlier findings. Upon remand, ITA notified the court of its intent to revoke the antidumping order as to Chevron and the court issued an order affirming this remand determination. ITA then published notice of the revocation in the Federal Register. 48 Fed. Reg. 40,760, 40,761 (1983). Freeport Mineral Company (Freeport Minerals) filed suit to challenge ITA's remand determination and the CIT dismissed the action. *Freeport Minerals Co.* v. *United States,* 7 CIT 65, 583 F. Supp. 586 (1984), *rev'd,* 758 F.2d 629 (1985). The court held that Freeport Minerals' suit was untimely because the company failed to timely challenge ITA's administrative review determination made prior to remand. 7 CIT at 69, 583 F. Supp. at 589–90. In addition, the suit was barred as a collateral attack because, according to the court, the CIT's order affirming ITA's remand determination was *res judicata. Id.* at 70, 583 F. Supp. at 590–91. The Federal Circuit reversed on appeal, 758 F.2d 629 (Fed. Cir. 1985), and it is this opinion which, according to defendant here, dictates that this court lacks jurisdiction over the case at bar.

On the collateral estoppel issue, intervenor-Chevron argued to the appellate court in *Freeport Minerals* that having assumed jurisdiction over Chevron's challenge of ITA's decision to postpone revocation, the CIT never lost jurisdiction over the case. Thus, Chevron claimed, ITA's decision on remand was made pursuant to the CIT's authority rather than under ITA's statutory authority. It would follow from Chevron's argument that the remand determination was *res judicata* and Freeport Minerals would therefore be collaterally estopped from challenging that determination before the CIT. The Federal Circuit rejected this argument and stated:

> Congress has granted the lower court broad powers of relief, including authority to issue "orders of remand," but nowhere has it granted that court authority to assume control of an agency case, once that case has come to it for judicial review, and retain control over it regardless of the statutes which the agency must follow.

758 F.2d at 636 (footnotes omitted).

From this, defendant here argues that upon remand this court lost jurisdiction over plaintiff's action.

The court cannot agree, however, that *Freeport Minerals* controls the case at bar in the way defendant contends. As noted, plaintiff here filed an action with this court to contest ITA's failure to include subsidies in calculating the cost of production in an antidumping proceeding. In its early antidumping determination, prior to remand, ITA addressed a comment in which petitioners at the administrative level contended that subsidies should be so included. ITA rejected this contention, stating that "those costs recorded in the manufacturer's books and records * * * fairly represent the costs of producing the product." 49 Fed. Reg. 29,995, 29,996 (1984). Saarstahl's cost of production was therefore calculated, as in the antidumping duty order, without regard to subsidies.

On remand, ITA responded to additional comments submitted on the subsidies issue and again concluded that subsidies should not be included in the calculation of the cost of production. As stated by ITA in its remand results submitted to this court,

> [ITA] also considered the issue of whether it should add the amount of subsidies received by Saarstahl to cost in calculating cost of production.
>
> To calculate Saarstahl's production costs, we used the cost recorded in the company books and records and *reaffirm our position* that these recorded costs fairly represent Saarstahl's cost of producing the product.

Tool Steel From the Federal Republic of Germany; Remand Results of Early Determination of Antidumping Duty at 9 (October 8, 1985) (emphasis added). Thus, unlike *Freeport Minerals,* ITA here did not reach a "new determination" on the relevant issue but, rather, simply gave additional consideration to its initial determination and reaffirmed that determination. Plaintiff is evidently still dissatisfied with ITA's conclusion on the subsidies issue and thus wishes to proceed with its suit against the government. Defendant, however, claims that plaintiff must file a new action now that the remand determination has been published. 51 Fed. Reg. 10,071 (1986).

Had ITA issued a "new determination" on remand reversing its earlier position, a party who had "no previous opportunity to attack the determination," *Freeport Minerals,* 758 F.2d at 636, might successfully argue that *Freeport Minerals* protected him from being barred by collateral estoppel or timeliness claims from challenging the "new determination." It does not necessarily follow from this or from the previously quoted language from *Freeport Minerals,* however, that the very act of remanding a case for further consideration deprives this court of jurisdiction over the suit. *Cf. Cabot Corp.* v. *United States,* No. 86-729 (Fed. Cir. Apr. 9, 1986).

As noted by this court in *Roquette Freres* v. *United States*, 6 CIT 329, Slip Op. 83-137 at 4 (Dec. 31, 1983), *appeal docketed*, No. 84-856 (Fed. Cir. Feb. 27, 1984) "[j]urisdiction once vested in the court is neither so fleeting nor illusory as to dissipate upon the court's exercise of its inherent discretionary power to require further deliberation by the administrative body."[2] Despite remanding an administrative decision for further consideration, the court in *Roquette Freres* retained jurisdiction over the cause of action and therefore refused to permit plaintiff to initiate a new suit to challenge the remand determination. *Id.* Similarly, in the case at bar, this court retained jurisdiciton following remand and, therefore, will not require plaintiff to file a new action to challenge the very issue already before the court; namely, whether ITA was required to include subsidies in calculating Saarstahl's cost of production. To hold otherwise would "serve no purpose other than to impede sound judicial administration." *Id.* Thus, defendant's motion to dismiss for lack of jurisdiction is denied.

Saarstahl moves to intervene in this action, pursuant to Rule 24 of the Rules of this Court and 28 U.S.C. § 2631(j) (1982), to challenge ITA's recalculation of the dumping margin on remand. Saarstahl does not challenge, however, the remand results on the issue of subsidies raised by plaintiffs in their complaint. Plaintiffs and defendant resist the intervention on the grounds that it raises issues not in dispute between the original parties.

Intervention in a suit before this court challenging an antidumping investigation is governed by 28 U.S.C. 2631(j)(1)(B),[3] and Rule 24 of the Rules of this Court.[4] On the face of the statute and the rule, Saarstahl would appear to be entitled to intervene as of right, but certain constraints have been read into these provisions. In particular, the Court of Customs and Patent Appeals ruled in *Sumitomo Metal Industries* v. *Babcock and Wilcox, Co.* 69 CCPA 75, 81-83, 669 F.2d 703, 707-08 (1982), that timeliness is a requirement of the right to intervene granted under Rule 24(a)(1) where a "statute of the United States confers an unconditional right to intervene." CIT Rule 24(a)(1). The timeliness aspect has been further defined by this court in at least two cases. In both *Fuji Electric Co.* v. *United States*, 7 CIT 247, 595 F. Supp. 1152, 1153 (1984) and *Nakajima All Co.* v. *United States*, 2 CIT 170, 172 (1981), this court ruled that an intervenor who challenges aspects of an antidumping de-

[2] This statement is no less true where, as here, remand is consented to by the parties.

[3] 28 U.S.C § 2631(j)(1)(B) (1982) reads:

(j)(1) Any person who would be adversely affected or aggrieved by a decision in a civil action pending in the Court of International Trade may, by leave of court, intervene in such action, except that—

* * * * * * *

(B) in a civil action under section 516A of the Tariff Act of 1930, only an interested party who was a party to the proceeding in connection with which the matter arose may intervene, and such person may intervene as a matter of right * * *

[4] Rule 24(a) of the Rules of the Court of International Trade reads:

(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

termination not challenged by the original parties must comply with the statutory time limits for filing the original action.

If the proposed intervenor here wanted to challenge an additional aspect of the original determination, most likely it would be time barred. As to the new determination, on remand, increasing Saarstahl's antidumping duties, Saarstahl may challenge that determination by filing a suit. *See Freeport Minerals,* 758 F.2d at 634, 636. Furthermore, if the intervenor wanted to join in the dispute between the original parties, it might or might not be permitted to do so depending on the analysis of the factors discussed in *Sumitomo.* 69 CCPA at 81, 669 F.2d at 707. This intervenor, however, does not wish to join in the original dispute. Its complaint is new.

Saarstahl argues that it has an interest in the dispute at hand because the original dispute resulted in a remand order setting forth a determination which injured Saarstahl. The recalculation of the dumping margin, however, was a wholly independent act of ITA. It has nothing to do with the case at hand and must rise or fall on its own. Thus, Saarstahl is not concerned with the issues arising in the original dispute between the parties and may not intervene as of right under 28 U.S.C. § 2831(j)(1)(B) and Rule 24(a).

Saarstahl argues that it should, in the alternative, be allowed to intervene permissively under Rule 24(b).[5] The government contends, however, that there is no permissive intervention in a proceeding challenging an antidumping determination. The government is clearly correct, insofar as a person who does not participate in the proceeding below may not intervene, even if the conditions of Rule 24(b)(2) are met. 28 U.S.C. § 2631(j)(1)(B). In this case, however, Saarstahl did participate. Nevertheless, there is no ground for permissive intervention here under Rule 24(b)(2), because intervenor's claim raises no issues in common with plaintiff's cause of action. If there had been a question of law or fact in common with the main proceeding, under the statutes and judicial precedent applicable in this court, intervention most likely would have been permitted under Rule 24(a) as of right. Whether all interventions in actions brought pursuant to 28 U.S.C. § 1581(c) must be of right need not be decided here.[6] Saarstahl can sustain no grounds for intervention of any kind.

Furthermore, the court is guided by the clear judicial policy of keeping these already complicated cases as free of unnecessary con-

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[5] Rules 24(b) of the Rules of the Court of International Trade reads:

(b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of the United States confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

[6] One might argue that the judicial interpretations of 28 U.S.C. § 2631(j)(1)(B) have rendered all interventions in these cases permissive in that the right of intervention is conditioned. See CIT Rule 24(b)(1). On the other hand, the bar against intervention for failure to raise new challenges within the statutory timeframe admits of no discretion, and in that sense, is not permissive.

fusion as possible. Neither the original parties nor the proposed intervenor, however, should be prejudiced by adherence to this policy. The original parties might be prejudiced by Saarstahl's intervention, but Saarstahl is not prejudiced by the denial of its motion to intervene. Saarstahl is free to challenge in an independent action, both the act of ITA in amending its margin determination and the appropriateness of the margin itself.

As to the subsidies issue, plaintiff is already protected by its presently filed action, but to avoid any further procedural quagmire, now that the new determination has been published in the Federal Register, plaintiff might move to amend its complaint to challenge the new determination as to the subsidies issue.

For these reasons, the request for intervention is denied.

ABSTRACTED CLASSIFIC

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED
				Item No. and rate
C86/56	DiCarlo, J. April 2, 1986	Allis-Chalmers Corp.	84-3-00441	Item 727.06 4%, 3.9%, or 3.6%
C86/57	DiCarlo, J. April 2, 1986	W.R. Filbin & Co.	84-8-01099, etc.	Item 660.71 4.7%
C86/58	Carman, J. April 9, 1986	Mattel, Inc.	83-6-00870	Item 737.22 16.8% or 16.1% Item 737.24 15.4%
C86/59	Restani, J. April 11, 1986	Samuel Brilliant Co.	84-5-00681	Item 700.95 12.5%

SIFICATION DECISIONS

ED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
nd rate	Item No. and rate		
, or	Item 692.34 Free of duty	Agreed statement of facts	Norfolk Seats and/or Driver seats
	Item 660.64 Free of duty	Agreed statement of facts	Detroit Gray cast iron engine parts
16.1%	Item A774.55 Free of duty except for merchandise imported from the Republic of China (Taiwan) from April 1 to Dec. 1981 which is dutiable under item 774.55 7.7%	Mattel, Inc. v. U.S., Slip Op. 84-133	New York Base stands and leg holders
	Item 700.35 8.5%	Agreed statement of facts	Boston Men's and boys' footwear

ABSTRACTED VALUAT

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	
V86/22	Watson, J. April 9, 1986	Mitsui & Co.	R66/408	Export value	F
V86/23	Watson, J. April 9, 1986	Nomura (American) Corp.	R63/13004	Export value	F
V86/24	Watson, J. April 9, 1986	Novelty Veiling Co.	291402A, etc.	Export value	F
V86/25	Watson, J. April 9, 1986	Rugby Int'l Corp.	R65/15228, etc.	Export value	F
V86/26	Watson, J. April 9, 1986	Rugby Rugs Inc.	R66/9207	Export value	F
V86/27	Watson, J. April 9, 1986	S. Shamash & Sons, Inc.	R58/22140, etc.	Export value	F

	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
	F.o.b. unit prices plus 20% of difference between f.o.b. unit prices and appraised values	Agreed statement of facts	Los Angeles Transistor radios together with their accessories and parts, an entirety
	F.o.b. unit prices plus 20% of difference between f.o.b. unit prices and appraised values	Agreed statement of facts	New York Transistor radios together with their accessories and parts, an entirety
	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit prices and appraised values	Agreed statement of facts	New York Silk scarves
	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Seattle Tube mats
	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Charleston Rugs
	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit prices and appraised values	Agreed statement of facts	New York Silk fabrics

ABSTRACTED VALUATION DECISI

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HE
V86/28	Watson, J. April 9, 1986	S. Shamash & Sons, Inc.	R58/22963, etc.	Export value	F.o.b. uni plus 20 between and app
V86/29	Watson, J. April 9, 1986	S. Shamash & Sons, Inc.	R58/27535, etc.	Export value	F.o.b. uni plus 20 between and app
V86/30	Watson, J. April 9, 1986	Trans-Ocean Import Co.	R64/22582	Export value	F.o.b. uni plus 20 between and app
V86/31	Watson, J. April 10, 1986	Bunge Corp.	R58/19311, etc.	Export value	F.o.b. uni plus 20 between voice praised
V86/32	Watson, J. April 10, 1986	Durlacher & Co.	233248A, etc.	Export value	Respective values
V86/33	Watson, J. April 10, 1986	George E. Bardwill & Sons	R60/17930, etc.	Export value	F.o.b. uni plus 20 between and app
V86/34	Watson, J. April 10, 1986	International Importers, Inc.	R61/5055, etc.	Export value	F.o.b. unit of diff f.o.b. un praised
V86/35	Watson, J. April 10, 1986	Mitsui & Co.	R64/17995	Export value	F.o.b. unit of diff f.o.b. un praised

ECISIONS—Continued

HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
.b. unit invoice prices plus 20% of difference between f.o.b. unit prices and appraised values	Agreed statement of facts	New York Silk fabrics
.b. unit invoice prices plus 20% of difference between f.o.b. unit prices and appraised values	Agreed statement of facts	New York Silk fabrics
.b. unit invoice prices plus 20% of difference between f.o.b. unit prices and appraised values	Agreed statement of facts	Philadelphia Rugs
.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Seattle Wool hooked rugs
spective appraised alues less 7.5% thereof	Agreed statement of facts	New York Silk wearing apparel
.b. unit invoice prices plus 20% of difference between f.o.b. unit prices and appraised values	Agreed statement of facts	New York Table cloths and napkins
.b. unit prices plus 20% f difference between o.b. unit prices and appraised values	Agreed statement of facts	Chicago Transistor radios together with their accessories and parts, an entirety
.b. unit prices plus 20% f difference between o.b. unit prices and appraised values	Agreed statement of facts	Chicago Transistor radios together with their accessories and parts, an entirety

ABSTRACTED VALUATION DECISIONS—Continued

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
V86/36	Watson, J. April 10, 1986	Novelty Veiling Co.	R59/15604, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit prices and appraised values	Agreed statement of facts	New York Silk scarves

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